

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2019-353-C - ORDER NO. 2020-189
MARCH 6, 2020

IN RE: Application of NextGen Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Resold and Facilities-Based Local Exchange Telecommunications Services in the State of South Carolina, and for Alternative and Flexible Regulation)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AND ALTERNATIVE AND FLEXIBLE REGULATION
)	

This matter comes before the Public Service Commission of South Carolina (“Commission”) by way of the Application of NextGen Communications, Inc. (“NextGen” or the “Company”) for a Certificate of Public Convenience and Necessity to provide facilities-based and resold local exchange service and intrastate interexchange telecommunications services in the State of South Carolina (“Application”). The Company’s Application was filed pursuant to S.C. Code Ann. § 58-9-280 and the rules and regulations of the Commission. By the Application, the Company also requests flexible regulation of NextGen’s local exchange telecommunications service offerings pursuant to Order No. 98-165 in Docket No. 1997-467-C, as well as waiver of certain Commission regulations.

The Commission’s Clerk’s Office instructed the Company to publish a one-time Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of the Company and of the manner and time in which to file the appropriate

pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was filed by the South Carolina Telephone Coalition (“SCTC”). Subsequent to the intervention, the Company and SCTC reached a Stipulation, attached hereto as Order Exhibit No. 1.

On January 28, 2020, counsel for the South Carolina Office of Regulatory Staff (“ORS”) filed a letter with the Commission setting out that it had reviewed the Application and did not oppose the Commission granting the Application. The ORS also indicated that it did not intend to attend the hearing scheduled in this matter.

A hearing was held on February 3, 2020, at 10:00 am in the offices of the Commission in Columbia, South Carolina, before B. Randall Dong, Hearing Examiner. The Applicant was represented by Samuel J. Wellborn, Esquire. The SCTC and ORS did not appear at the hearing.

Kent Hellebust, President of NextGen Communications, Inc., appeared by videoconference and testified in support of the Application. The record reflects that NextGen is a Maryland corporation and is registered to do business in the State of South Carolina. According to Mr. Hellebust, the Company seeks authority to provide facilities based and resold local exchange and interexchange services. Mr. Hellebust explained NextGen’s request for authority, and the record further reveals the Company’s services, operations, and marketing procedures. NextGen intends to offer 9-1-1 emergency services to government and quasi-government Public Safety Answering Points (“PSAPS”), including 9-1-1 selective routing, switching, aggregation and call transport. The Company

intends to provide emergency call routing, transport, and related functionalities to state and municipal governmental agencies to support PSAP operations. Mr. Hellebust also discussed NextGen's technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Hellebust explained that NextGen possesses sufficient financial resources to support its operations in South Carolina. Mr. Hellebust also explained that the Company's management team has extensive management and telecommunications experience. Mr. Hellebust offered that approval of the Application will serve the public interest.

NextGen requested a waiver of S.C. Code Ann. Regs. 103-610, since the Company's books are maintained in its offices located in Seattle, Washington. Further, the Company requested an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts ("USOA"), as the Company's financial records are maintained in accordance with Generally Accepted Accounting Principles ("GAAP"). In addition, the Company requested waiver of S.C. Code Ann. Regs. 103-612(2.3)'s requirement that it file a map since it seeks statewide certification, and waiver of S.C. Code Ann. Regs. 103-607 that it post a bond since NextGen does not intend to provide residential local exchange services at the present time.

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Company is a corporation organized under the laws of the State of Maryland and is registered to do business in the State of South Carolina.

2. The Company desires authority to provide facilities based and resold local exchange and interexchange services in South Carolina.

3. We find that the Company possesses the managerial experience and capability to operate as a provider of local exchange and interexchange services in South Carolina.

4. We find, based on the financial statements submitted by the Company and the testimony at the hearing, that the Company possesses sufficient financial resources to provide the services as described in its Application and testimony.

5. We find that the issuance of a Certificate of Public Convenience and Necessity to the Company to operate as a provider of local exchange and interexchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina by promoting the availability of more innovative services and increasing the availability of competitive options for Next Generation 9-1-1 services.

6. The Commission finds the Company's requested waiver of 10 S.C. Code Ann. Regs. 103-610 is reasonable and understands the potential difficulty presented to the Company should the waiver not be granted. Further, we find that a waiver of 10 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable. Since the Company does not intend to provide retail residential local exchange services,

we also find that it is appropriate and reasonable to waive 10 S.C. Code Ann. Regs. 103-607. Should the Company offer residential local exchange services in the future in South Carolina, we find that it should comply with the bond requirement of 10 S.C. Code Ann. Regs. 103-607. Finally, since NextGen seeks statewide certification, we grant the requested waiver of S.C. Code Ann. Regs. 103-612(2.3)'s requiring that NextGen file a map of its operating area.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-80(B)(1).

8. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280(B)(3).

9. The Commission finds that services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2).

10. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280(B)(5).

11. The ORS did not appear at the hearing and the fact that it did not oppose the grant of the Application herein is duly noted.

CONCLUSIONS OF LAW

1. The Commission concludes that NextGen possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

3. The Commission concludes that the Company will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of NextGen's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina, by offering additional service offerings to South Carolina's consumers, and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by NextGen will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide intrastate local exchange and interexchange telecommunications services as requested by NextGen and as set forth in its Application and Mr. Hellebust's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to NextGen to provide facilities-based and resold local exchange and interexchange telecommunications services within South Carolina.

8. Should NextGen offer residential interexchange services in the future, the Commission adopts a rate design for NextGen for its residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. *In Re: Application of GTE Sprint Communications Corporation*, Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Should NextGen offer residential interexchange services in the future, NextGen shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. NextGen shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. *In Re: Application of GTE Sprint Communications*, Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall

constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. § 58-9-540 (Supp. 2015).

10. The Commission concludes that NextGen's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$.035 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing, subject to possible challenge

within seven (7) day of the filing, in which case the tariff filing would be suspended pending further order of the Commission.

11. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to possible challenge within thirty (30) days of the filing, in which case the tariff filing would be suspended pending further order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

12. We conclude that NextGen's request for waiver of S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on NextGen. We also grant exemption from the policies requiring use of USOA. In addition, we grant waiver of S.C. Code Ann. Regs. 103-612.2.3 and 103-607.

13. The Stipulation between NextGen and SCTC should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to NextGen to provide intrastate local exchange and interexchange telecommunications services within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those described in the Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, the Company shall file its tariffs using the Commission's e-filing system for tariffs within 30 days of the issuance of this Order. The tariffs should be electronically filed in a text searchable PDF format using the commission's DMS system (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariffs should be made using the ETariff System. The tariffs shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

4. NextGen shall resell the services of only those interexchange carriers or local exchange carriers ("LECs") authorized to do business in South Carolina by this Commission.

5. NextGen shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, NextGen shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.sc.gov/Forms or at the ORS's website at www.ors.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

6. Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31st** of each year. The proper form for filing gross receipts information can be found at the ORS website at www.ors.sc.gov, and the appropriate form is entitled “Gross Receipts Form.”

7. Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund (“USF”) worksheet, which may be found on the ORS’s website at www.ors.sc.gov. This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 1st** with the Commission and ORS.

8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. NextGen shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS’s website at www.ors.sc.gov; this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

9. The Company is directed to comply with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission.

10. NextGen requested a waiver of S.C. Code Ann. Regs. 103-610, which requires the Company to maintain its financial books and records within the State of South Carolina. NextGen is granted permission to maintain its financial books and records at its principal headquarters provided that NextGen makes its books and records available for examination upon request by the ORS. Further, the Commission acknowledges that NextGen shall maintain its financial records in conformance with GAAP. NextGen is directed to comply with all Rules and Regulations of the Commission unless a regulation is specifically waived by the Commission. NextGen is also granted a waiver of the requirement to file a map pursuant to S.C. Code Ann. Regs. 103-612.2.3. Finally, we waive the requirement that NextGen file a bond pursuant to S.C. Code Ann. Regs. 103-607 until such time as NextGen provides retail residential local exchange service in South Carolina.

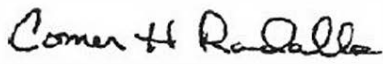
11. NextGen is required to comply with Title 23, Chapter 47 of the South Carolina Code Annotated, which governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911” system or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the commission hereby instructs NextGen to contact the appropriate authorities regarding 911 services in the counties and cities where the Company will be operating, should the Company become interconnected to the public switched telephone network. Contact with the appropriate 911 service

authorities is to be made before beginning local telephone service in South Carolina. Contact information for local 911 providers is available on the Commission's website under "E-911 Information". By this Order and prior to providing local telephone services in South Carolina, NextGen shall contact the 911 coordinator in each county (and city where the city has its own 911 system) and shall provide information regarding the Company's operations as required by the 911 system.

12. The Stipulation between the SCTC and NextGen is hereby approved.

13. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Comer H. "Randy" Randall, Chairman

ATTEST:


Jocelyn Boyd, Chief Clerk/Executive Director

4. Applicant stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until Applicant provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Applicant acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Applicant stipulates and agrees that, if Applicant gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Applicant will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Applicant acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Applicant, and this Stipulation in no way suspends or

adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

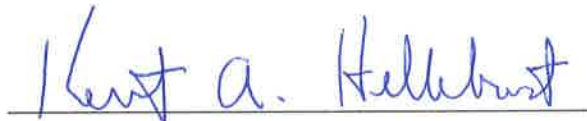
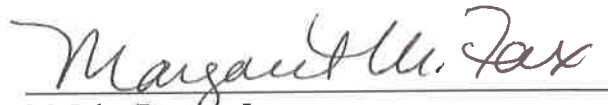
8. Applicant agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. Applicant hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 7th day of January, 2020.

NextGen Communications, Inc.

South Carolina Telephone Coalition

Handwritten signature of Kent A. Hellebust in blue ink, written over a horizontal line.Handwritten signature of Margaret M. Fox in blue ink, written over a horizontal line.

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ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

Chesnee Telephone Company

Chester Telephone Company, d/b/a TruVista

Comporium, Inc. (f/k/a Rock Hill Telephone Company)

Farmers Telephone Cooperative, Inc.

Ft. Mill Telephone Company, d/b/a Comporium

Home Telephone ILEC, LLC d/b/a Home Telecom

Lancaster Telephone Company, d/b/a Comporium

Lockhart Telephone Company, d/b/a TruVista

McClellanville Telephone Company (TDS)

Norway Telephone Company (TDS)

Palmetto Rural Telephone Cooperative, Inc.

Piedmont Rural Telephone Cooperative, Inc.

PBT Telecom, d/b/a Comporium

Ridgeway Telephone Company, d/b/a TruVista

St. Stephen Telephone Company (TDS)

West Carolina Rural Telephone Cooperative, Inc.

Williston Telephone Company (TDS)